

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 116 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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COMMISSIONER OF INCOME TAX

Versus

ISMAILBHAI M MANSURI

Appearance:

Mr M J Thakorre, Ld. Counsel for M/s. R P Bhatt & Co.,
for Applicant.

SERVED for Respondents.

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

Date of decision: 01/08/96

ORAL JUDGEMENT

In both the matters, question referred to this Court by the Tribunal for the opinion is as under : -

"Whether on the facts and in the circumstances of the case, the order of the C.I.T. passed u/s. 263 of the Income-tax Act, 1961 was rightly set aside by the

Tribunal ?"

2. The assessee in Income Tax reference No.116 of 1988, Ismailbhai M. Mansuri is a partner in the firm of Graduate Picker Works. The assessee in Income Tax Reference No.118 of 1988, Yasinbhai I. Mansuri is also a partner in the said firm. In both the matters, the Assessment Year is 1981-82. Each assessee had 20% share in the firm and a trust was settled on 21.10.1974. For the Assessment Year 1975-76, the share income of the firm was included in the total income of the assessee. It appears that from the year 1975-76, separate returns of income of the trust and beneficiaries came to be filed. The same was not accepted till the year 1980-81. Ultimately, the Tribunal accepted the contention of the assessee and held that the same is not includable.

3. So far as the relevant Assessment Year is concerned, ITO did not include the share income from the said firm in the total income of the assessee concerned. The order was revised under Sec. 263 of the Income tax Act, 1961 by the Commissioner of Income Tax directing the ITO to include the share income of the firm in the total income of the assessee. It appears that the statements of the case against the orders passed earlier have been referred to this Court in para 4 of both the references.

4. In reported decision of this Court in the case of Sunil J. Kinariwala Vs. CIT, reported in 211 ITR 127 and in the case of CIT Vs. Prashant J. Kinariwala reported in 211 ITR 393, the same question has been considered and the Court has held that such income by way of share in the profits of the firm is not includable in the total income of the assessee. In the facts and circumstances of the case, it is the case covered by the aforesaid decision.

5. Hence, we answer the question in favour of the assessee and against the revenue in both the references.

6. Answer accordingly with no order as to costs.
